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SERVICE DATE – MARCH 3, 2006

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34832

TRANSIT SOLUTIONS GROUP, LLC
—OPERATION EXEMPTION—
NASHVILLE AND EASTERN RAILROAD

STB Finance Docket No. 34833

WILLIAM J. DRUNSIC AND JEFFREY D. WILSON—CORPORATE FAMILY
TRANSACTION EXEMPTION—NASHVILLE AND EASTERN RAILROAD AND
NASHVILLE & WESTERN RAILROAD

Decided: March 2, 2006

This decision dismisses the notices of exemption filed in these proceedings for lack of jurisdiction.

BACKGROUND

On February 1, 2006, Transit Solutions Group, LLC (TSG), a noncarrier, filed a notice of exemption pursuant to 49 CFR 1150.31 to commence common carrier rail passenger service over tracks owned by the Nashville and Eastern Railroad Authority (NERA) and operated by the Nashville and Eastern Railroad (N&E). The contemplated passenger service would operate between Lebanon, TN, and Nashville, TN, a distance of 32 miles. TSG would operate as directed by The Regional Transportation Authority (RTA), a public body created by the Tennessee General Assembly for planning and implementing transit services.

In its notice, TSG states that it intends to operate as the agent of RTA, over trackage rights granted to RTA by N&E/NERA, in meeting the demand for common carrier passenger service. TSG adds that its operations are scheduled to commence no sooner than the summer of 2006 and that the line to be operated lies entirely within the State of Tennessee.

In a related filing, William J. Drunsic seeks to continue in control of TSG, N&E and the Nashville & Western Railroad (N&W), and Jeffrey D. Wilson seeks to continue in control of TSG and N&W pursuant to the corporate family transaction exemption at 49

CFR 1180.2(d)(3) upon TSG's acquisition of authority in STB Finance Docket No. 34832.

DISCUSSION AND CONCLUSIONS

These notices of exemption will be dismissed because the Board does not have jurisdiction over the passenger service contemplated by TSG. Although the Board generally has jurisdiction over rail transportation that is part of the interstate rail network, 49 U.S.C. 10501(a), TSG's proposed operations are specifically excepted from the Board's jurisdiction by 49 U.S.C. 10501(c).¹

Section 10501(c) states that mass transportation provided by a local governmental authority is not subject to the Board's jurisdiction. RTA is a "local governmental authority" as defined by 49 U.S.C. 5302(a). TSG, in turn, would also be considered to be a local governmental authority, because it will be operating under a contract with RTA, as provided in 49 U.S.C. 10501(c)(1)(A)(ii). Moreover, the commuter service contemplated by TSG satisfies the definition of mass transportation contained in 49 U.S.C. 5302(a).² TSG's operations are, therefore, outside the Board's jurisdiction.

Even if the contemplated operations did not fall within the definition of mass transportation, they would not come within the Board's jurisdiction because the agency does not have jurisdiction over transportation that is not part of the interstate rail

¹ Section 10501(c) provides in relevant part as follows:

(c)(1) In this subsection—

(A) the term 'local governmental authority'—

(i) has the same meaning given that term by section 5302(a) of this title;
and

(ii) includes a person or entity that contracts with the local governmental authority to provide transportation services; and

(B) the term 'mass transportation' means transportation services described in section 5302(a) of this title that are provided by rail.

(2) Except as provided in paragraph (3), the Board does not have jurisdiction under this part over mass transportation provided by a local governmental authority.

(3)(A) Notwithstanding paragraph (2) of this subsection, a local governmental authority, described in paragraph (2), is subject to applicable laws of the United States related to—

(i) safety;
(ii) the representation of employees for collective bargaining; and
(iii) employment, retirement, annuity, and unemployment systems or other provisions related to dealings between employees and employers.

² Section 5302(a)(7) defines "mass transportation" as "transportation by a conveyance that provides regular and continuing general or special transportation to the public, but does not include school bus, charter, or sightseeing transportation."

network.³ There is no evidence here that TSG's passengers would be traveling on the line that will be operating as part of an interstate trip⁴ or that TSG will participate in an interstate movement of freight.⁵

Thus, the record indicates that TSG's contemplated operations are not subject to the Board's jurisdiction. Accordingly, both the notice of exemption for the proposed operations and the related notice of exemption for continuance in control will be dismissed on that basis.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The notice of exemption filed in STB Finance Docket No. 34832 is dismissed.
2. The notice of exemption filed in STB Finance Docket No. 34833 is dismissed.
3. This decision is effective on the date of service.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary

³ See, e.g., Fun Trains, Inc.—Operation Exemption—Lines of CSX Transportation, Inc. and Florida Department of Transportation, STB Finance Docket No. 33472 (STB served Mar. 5, 1998); Napa Valley Wine Train, Inc.—Pet. For Declaratory Order, 7 I.C.C.2d 954, 960-65 (1991).

⁴ Cf. ICC v. Capital Transit Co., 338 U.S. 289 (1949).

⁵ Cf. Historic Railroads, Inc.—Acquisition and Operation, 347 I.C.C. 369 (1974); Durango & S.N.G.R. Co.—Acquisition and Operation, 363 I.C.C. 292 (1979).